
THE “DOUBLE DISCOURSE” ON SEXUAL AND REPRODUCTIVE RIGHTS IN LATIN AMERICA: THE CHASM BETWEEN PUBLIC POLICY AND PRIVATE ACTIONS

The international policy arena today is marked by strong clashes of values with regard to sexuality and reproduction. This chapter¹ will examine how political controversies affect citizens’ ability to exercise sexual and reproductive rights in Latin America, with examples from several countries, but focusing mainly on Chile. This study describes how societies accommodate conflicting views on sexuality and reproduction via a “double discourse system,” which maintains the status quo in repressive or negligent public policies while expanding private sexual and reproductive choices behind the scenes. Two specific examples—divorce law in Chile and abortion advocacy in Colombia and Chile—will highlight how this breach between public discourse and private actions operates in practice, and who is harmed by it. The chapter will conclude by discussing the implications of this system for rights advocacy.

In Latin America and throughout the world, general consensus exists among governments on the now-standard phrases that summarize reproductive rights in the Programme of Action of the International Conference on Population and Development (ICPD), held in Cairo in 1994:

[Reproductive rights refers to] the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children, and to have the information and means to do so, and the right to attain the highest standard of reproductive and sexual health. [Reproductive rights] also includes [couples and individuals’] right to make decisions concerning

reproduction free of discrimination, coercion and violence, as expressed in human rights documents.²

In Latin America, as in many other regions, certain concrete implications of these principles of consensus are vehemently disputed at all levels, from the family to the central government. Do these rights extend to adolescents—that is, do adolescents count as “couples and individuals”? In the two rounds of post-ICPD meetings in 1999 and 2004, whenever issues related to adolescents’ access to reproductive health services arose, conservative country delegations opposed these provisions, arguing that parents’ rights supersede those of adolescents.

Other implications of reproductive rights arouse controversy. If women have the right to decide freely on the number and spacing of their children, doesn’t that entail the right to safe abortion services? This is certainly the most publicized conflict in the reproductive rights field, so much so that all too often the term “reproductive rights” is reduced to the issue of abortion in the public mind. It should also be noted that while there finally appears to be some consensus that sexual violence and coercion are violations of basic human rights, many conservative groups remain opposed to the term “sexual rights,” which they believe will lead to recognition of freedom of sexual orientation as a right.

REPRESSIVE PUBLIC LAWS AND EXPANDED PRIVATE OPTIONS: SEXUAL AND REPRODUCTIVE RIGHTS IN LATIN AMERICA

The political climate surrounding sexual and reproductive rights is characterized by a worldwide increase in religious fundamentalism on the one hand and cultural globalization on the other, which has exacerbated preexisting political and cultural divisions. In Latin America, the majority of citizens identify as Roman Catholic, and the church is the main force against full recognition of sexual and reproductive rights. As in European countries with a dominantly Catholic tradition and among Catholics in the United States, most studies show that in practice Latin American Catholics do not follow the official teachings of the church on the use of contraception and abortion.³ The increasing strength of hard-line factions over the past twenty years has resulted in growing rigidity in the church’s position on these issues and increasing repression of dissident views within Catholic institutions.⁴ Although the channels through which the Roman Catholic hierarchy exercises its political influence are often hidden from public view, the visible result is policies that deny reproductive and sexual rights to citizens—policies that seem to become ever more deeply entrenched in a polarized political climate.

How do Latin American countries accommodate the sharp divisions in public opinion on these issues and the universal and often pressing need

for individuals and couples to exercise freedom of decision-making in sexuality and reproduction? In many cultures, escape valves allow private accommodations that sidestep repressive policies, leaving the official legal and/or religious norms untouched while reducing the social and political pressure for policy advances.

This type of societal rift between public stands and private actions also operates at the level of the individual. Rosalind Petchesky has discussed women's private strategies to expand their reproductive choices:

As our fieldwork progressed . . . we found that the two extremes of outright resistance and passive accommodation are much rarer than the kinds of complicated, subtle reproductive and sexual strategies that most of our respondents adopt in order to achieve some degree of autonomy and at the same time maintain their place in the family and community. . . . [A woman] may see no contradiction whatsoever in both acting against a particular norm and speaking in deference to it. Indeed, accommodation in practice often means a non-confrontational or conciliatory way of achieving one's wishes or sense of right.⁵

The Double Discourse System

A recurrent theme within the Latin American countries with which the author is most familiar—Colombia, Peru, Chile, and Argentina⁶—is the “double discourse” (*doble discurso*). This phrase, usually applied to individuals, is widely understood to signify the art of espousing traditional and repressive sociocultural norms publicly, while ignoring—or even participating in—the widespread flouting of these norms in private. This chapter expands the use of the term “double discourse” to signify a political and cultural system, not just an agglomeration of individuals privately “sinning.” Thanks to the ubiquity of the double discourse, in most Latin American countries the reproductive and sexual choices open to citizens are much wider than what the official policies would lead one to believe. At the heart of this system lies the chasm between public discourse, upholding traditional religious precepts that limit individual choices, and unofficial private discourses—in conversations, interior monologues, and the confessional—that rationalize or ask forgiveness for transgressions. These private individual discourses are complemented by social and political mechanisms—in various forms such as laws or interpretations of laws, common practices, or clandestine services—that provide an escape valve from repressive norms and make expanded choices possible. The primary features of the double discourse system, then, are the following:

- For historical and political reasons, the *hierarchies of a hegemonic religion exercise considerable influence over state policies*, imposing the religion's moral codes on legal norms. The distinction between immorality and criminality is blurred.

- *The official discourse and policies uphold highly restrictive norms based in religious doctrine*, and assume a sacred and inviolable character. These norms violate citizens' sexual and reproductive rights through repression or coercion and/or by preventing the state from fulfilling its obligation to protect the health of its citizens.
- *There are always political costs attached to espousing a change in the norm, which is sacred*. Public officials and civil society organizations come under attack when they publicly defend the legitimacy of the sexual or reproductive right in question or when they attempt to reform the policies.
- Individual practices that flout the norm are widespread, as are informal or illegal social and political mechanisms that make them possible. These mechanisms constitute an escape valve that expands citizens' sexual and reproductive choices. However, because the mechanisms are illegal or unofficial, neither availability, safety (in the case of services), nor protections of basic rights are guaranteed. Examples of such mechanisms include legal loopholes for marriage annulments when divorce is not legal, and clandestine abortion clinics.
- The worst consequences of the restrictive policies fall on low-income sectors and on groups that are disadvantaged, discriminated against, or marginalized in other ways, for example, ethnic minorities, single mothers, inhabitants of rural areas, and homosexual men and women. Political elites—generally from high-income sectors—usually do not suffer the worst consequences of the restrictive laws.
- *The high political costs attached to efforts for reform*, the political disenfranchisement of the groups that feel the worst consequences of the restrictive policies, and the existence of informal mechanisms that expand choice—all lead to a lack of political will for reform. Public debate exposing the system can lead to increased repression and limits on the informal mechanisms, thus restricting choice in practice and creating ethical dilemmas for advocates of reform.

Clearly, this chasm between public norms restricting individual rights and private discourses and mechanisms expanding them is not limited to the area of sexual and reproductive rights. So many sociocultural taboos and restrictions lie in this realm, however, that in Latin American popular usage *el doble discurso* generally refers to sexual and reproductive matters. In fact, the term “double discourse” is somewhat misleading, because its essence is that private actions deviating from the norm, even if they are almost universally practiced, are not favored with any *public* discourse at all that defends their legitimacy. The *private* discourse does not usually defend the sexual and reproductive rights that contravene these traditional norms; rather, it rationalizes individual actions or explains them in terms of weakness and sin.

Doble discurso is a fitting nonjudgmental label arising from these predominantly Catholic cultures, since the closest words in English for this phenomenon—for example, “hypocritical,” “deceptive,” “two-faced,” and “duplicitous”—are harsh in their judgments. The polarized debates that often coexist with double discourse systems beget severe judgments. In the debates about sex education in Chile, the reformers believe that they are simply recognizing the reality and risks of adolescent sexual

behavior, while their opponents are “hypocrites” who hide their heads in the sand. Likewise, those opposing the public health approach to sex education accuse the reformers of being “permissive” and promoting “promiscuity.”⁷ It might be fair to say that a double discourse system is built into Catholic cultures in those countries where for a variety of historical and political reasons the church has great influence on the state. In these countries, most of which are in Latin America, public officials often feel compelled to uphold the church’s teachings publicly although they know that actions at variance with the teachings are common.⁸ Catholics view this attitude not as hypocritical, but rather as upholding an ideal to which many, including oneself, fail to measure up, for reasons that God will understand and forgive.

Similar to the women described above by Petchesky, both Catholic women and the clergy make their personal peace with private choices that flout official norms. Clergy at the grassroots level are often more empathetic and flexible than the hierarchy. As the hierarchy often “silences” clergy who speak out publicly against the church’s repressive norms on sexuality and reproduction, their support for individuals’ forbidden reproductive and sexual behaviors usually takes place in the private realm of conversations and the confessional.⁹ A little-known study in Colombia on the attitudes of Catholic women and Catholic priests on abortion¹⁰ showed that most priests give absolution in the confessional to women who have had abortions, despite recent edicts urging priests to excommunicate women who have had abortions. For their part, Catholic women interviewed in abortion clinics made a de facto distinction between the public notion of mortal sin and the private spiritual notion of an understanding deity. Although they recognized that abortion is a sin, they stated that their relationship with God was not in any way ruptured by their actions, which arose from extreme hardship and necessity.

The examples of divorce law in Chile and abortion advocacy in Colombia and Chile will demonstrate these features of the double discourse system. Both illustrate how policymakers are willing to turn a blind eye to private actions and social institutions that flout the official norm, despite a perceived obligation to defend the norm. In both cases, disadvantaged groups have suffered disproportionately from the current policies, and individuals and groups advocating for reform have encountered multiple roadblocks.

THE CATHOLIC CHURCH AND DIVORCE LAW IN CHILE

During the seventeen years of military dictatorship from 1973 to 1990, the Catholic Church played a progressive role in Chile as the main proponent of respect for human rights and social justice. The church’s *Vicaría de Solidaridad* (Vicariate of Solidarity), which defended victims of human rights abuses during the years of the military dictatorship, saved the lives of

countless opposition politicians and activists who are now officials in the civilian government and leaders in the center-left government coalition, the *Concertación*. Furthermore, historically the church has been an important wellspring and source of support for efforts to increase socioeconomic justice in Chile. The progressive origins of the Christian Democratic Party, the majority party in the *Concertación*, have their roots in liberation theology movements in the Catholic Church. For these reasons, the church now enjoys a great deal of political influence in Chile, more than in most Latin American countries.¹¹

Coincident with this increase in the church's political influence has been the worldwide growth in power of the conservative wing of the church, noted above. The church's increasingly repressive focus on sexual and reproductive rights issues intensified during the 1990s in Chile, strengthening partnerships with the socially conservative opposition parties.¹² The church is thus in the enviable position of having strong alliances with socially conservative politicians of all political tendencies—both from the *Concertación* and from the rightist opposition parties—on policies related to the family, gender, reproduction, and sexuality. As a result, the public discourses in the Congress and in the media regarding proposed legal reforms on issues such as adultery, divorce, same-sex sexual relationships, new reproductive technologies, and abortion are all remarkably uniform in Chile in comparison with other Latin American countries.¹³ There is a notable lack of lively public debate on these policies, although most Chileans acknowledge that the private flouting of the policies is widespread. The *doble discurso* is nowhere so amply recognized and commented on as in this socially conservative country.

The countries without a divorce law can be counted on the fingers of one hand, although there is no official United Nations convention that explicitly identifies the right of individuals to separate definitively from their spouses and remarry.¹⁴ The powerful influence of the church on the three civilian governments of the nineties may explain why Chile was one of these countries until 2004. It took fourteen years of legislative efforts to pass the law, although, according to a 1999 survey, 70 percent of Chilean women were in favor of a divorce law.¹⁵ As in most modern industrialized countries, Chilean couples separate and pair up with new partners quite frequently. Many people simply live with a new partner and remain legally separated; others take the precaution of never getting married in the first place. During the 1990s, the courts granted almost 7,000 annulments per year.¹⁶

Most analysts have recognized that, until 2004, the Chilean legal framework for civilian annulment was a fraudulent safety valve that made up for the absence of a divorce law. The ground most frequently used is that one of the spouses (backed up by two witnesses) swears that she/he gave the wrong address at the time of the wedding ceremony and thus did not fall under the

jurisdiction of the official who performed the ceremony.¹⁷ Unfortunately, lawyers' fees make this option unavailable to most low-income people. Certainly one could argue that the lack of the option of divorce resulted in many second unions—especially for low-income families—that were never formalized, thus violating the recognized human right to contract marriage and form a family. One clear result of this situation has been a high and increasing rate of births out of wedlock, which climbed from 30 percent in 1985 to 46 percent in 1999.¹⁸

An annulment means that legally the marriage never existed, and any division of marital assets is completely up to negotiations between the couple.¹⁹ Therefore, the annulment leaves the custodial parent—usually a woman with fewer assets than her husband and no independent income—without the usual protections regarding rights to assets accumulated during marriage that are incorporated into legal divorces in most countries. Although biological fathers are supposed to pay child support (*pensión alimenticia*), the inefficient justice system cannot guarantee compliance, and so the mothers and children often suffer economically under this arrangement.²⁰ In this sense, the lack of a divorce law can be argued to constitute discrimination against women, as well as a violation of equality of rights in marriage.²¹

It is clear, then, which social sectors are harmed by the lack of a divorce law. It is less clear why there was so little political will to lead efforts for reform, although there were several attempts. First, it is emotionally and politically possible for Chilean legislators with annulled marriages or legal separations to be vehement opponents of the passage of a divorce law, in the name of the Chilean family and Catholic values. Widespread private transgressions of official norms coexist quite peacefully with public defense of these norms in a double discourse system. Second, the punitive power of the Catholic Church was probably a major factor in the failure of legislative efforts for reform. The church is willing to throw its considerable influence behind successful campaigns to elect socially conservative legislators, and to unseat legislators who lead the efforts to pass divorce laws and other laws expanding sexual and reproductive rights. The label of “*divorcista*” has been attached to reformers.²²

A divorce law did pass the Chamber of Deputies in 1997, however, thanks to a rare coalition of leaders that included an influential faction within the majority Christian Democratic Party and three legislators from the rightist parties. The bill passed the Chamber with ten votes from rightist parties.²³ At that time, the more conservative Senate defeated the bill. It took seven more years of effort by *Concertación* legislators, and further defections on this issue from the conservative parties, before both bodies in the legislature passed a divorce bill during the government of Ricardo Lagos in 2004. One explanation for this eventual success might be that Lagos is from the Socialist Party, which has fewer ties to the Catholic Church than the previous two *Concertación* governments, led by Christian Democrats. Another is that

the determined lobbying by the Catholic Church alienated increasing numbers of legislators from non-*Concertación* parties. However, the Catholic Church persisted and successfully lobbied to weaken the final version, which has a provision that establishes a one-year waiting period for a couple jointly requesting a divorce. If only one partner requests it, the waiting period is three years.

Other legislative developments starting in 1999—such as the passage of a new law abolishing the distinction between legitimate and illegitimate children and a resolution abolishing the law against sodomy—indicate that the political will to act on contentious social issues related to sexuality and reproduction is increasing in Chile.²⁴

One factor that may have weakened the political will to push for reform is that professionals with political influence come primarily from middle-class and upper-class backgrounds and could afford the lawyer's fees for an annulment. Although all classes certainly suffered inconveniences and difficulties from the lack of a divorce law, those in a position to affect political decisions did not suffer personally from the most negative consequences of the restrictive legislation.

The lack of strong civilian pressure to pass a divorce law is more puzzling. Even from the women's movement, there was little active pressure on legislators. One feminist legislator who helped lead efforts in the 1990s to push a divorce law through Congress remarked sadly that there were no supporters in the galleries during discussions of the bill. "It seems that [the women's movement] is extremely demobilized, and sometimes I feel very isolated in my efforts," she said.²⁵

One study hypothesized that a factor in the relative failure of Chilean feminists to address such issues might be the dispersion of Chilean feminists into NGOs that depend on government contracts for a substantial portion of their income. This dependence would lead to "self-censorship" regarding family law and those sexual and reproductive rights issues that cannot be addressed by the government due to church opposition.²⁶ Finally, there is widespread recognition, especially among NGOs that engage in community-level work, of the decreased level of mobilization of grassroots women's organizations since the advent of democracy.

As we have seen, the case of divorce law reveals some of the main features of the double discourse system. Because of the escape valves in marriage laws, most of those Chileans who might have had influence on the political process were able to secure an annulment, thus weakening political will for reform. So long as the rule of official silence was respected, political equilibrium was maintained. This equilibrium, however, was also profoundly inequitable toward low-income couples who could not afford annulments and mothers with custody of their children who were not able to negotiate privately a fair settlement regarding marital assets with their spouse.

ABORTION ADVOCACY IN COLOMBIA AND CHILE: WHEN TO BREAK THE SILENCE?

As mentioned in the introduction, there is perhaps no issue related to reproductive rights so hotly contested as the right to safe and legal interruption of unwanted pregnancies.²⁷ Most reproductive rights advocates hold that this right derives logically from “the right of couples and individuals to decide freely and responsibly the number, spacing and timing of their children.”²⁸ While there are many other arguments in favor of this right, the most widely used are public health and equity arguments, which recognize that the practice of abortions is widespread and that illegality does not stop the practice, but rather drives it underground, causing maternal morbidity and mortality through unsafe abortions, mainly among low-income women.²⁹ Middle- and upper-income women generally can pay for access to relatively safe clandestine abortion services, but the poor rarely have access to these services. In UN forums and in Catholic countries, public health and equity arguments are gaining ground, but the double discourse system mandates that abortion cannot be officially made legal, even if it is widespread.

El Salvador and Chile share the dubious distinction of being the only countries in the world where all abortions, even to save the mother’s life, are illegal and penalized, a legal situation that can be seen to violate the mother’s right to life.³⁰ These laws are even stricter than the Canonical Code of the Catholic Church, which allows abortions in cases of ectopic pregnancies and reproductive cancers.³¹ Because of the clandestine nature of induced abortions, the statistics on its prevalence are based on hospital data. The 1994 studies by the Alan Guttmacher Institute (AGI) estimate that there are about 288,400 abortions annually in Colombia and 159,650 in Chile (with total populations of roughly 36 million and 14 million respectively).³² Other estimates for Colombia range as high as 400,000 per year,³³ and AGI estimated in 1999 that Chile’s abortion rate is one of the highest in the world, at 50 per 1,000 births.³⁴ A nationwide Colombian urban household survey by Lucero Zamudio of the Universidad Externado found that one out of three women who had ever been pregnant had had an abortion.³⁵ It is estimated that in Chile, 35 of every 100 pregnancies end in abortion, while in Colombia, almost 600 women a year die from complications of abortion, which account for 67 percent of all hospitalizations for gynecological causes.³⁶ In both countries, mainly low-income women end up in public hospitals due to complications of unsafe abortions. Health providers in the public hospitals who disapprove of abortion often take punishing attitudes toward these patients. There are many accounts not only of hostile remarks, but also of providers performing D&Cs without anesthesia on women with incomplete abortions and forcing women to take medications designed to halt spontaneous abortions.³⁷

Nevertheless, in both countries, public opinion regarding abortion is much more progressive than the official policies. A 1997 poll of Colombian women in union (married or in a permanent relationship) found that 20 percent of the respondents had had an abortion, and 48 percent thought that it should be legal under certain circumstances. Much larger majorities thought that abortion should be legal “if the mother was in danger” (88 percent), if the fetus had severe physical or mental defects (78 percent), or in cases of rape (76 percent).³⁸ The electorate in Chile is perhaps only slightly more conservative on this issue. A 1999 national survey found that high percentages of women favored legal abortion in cases of rape or incest (59 percent), danger to mother’s life (78 percent), and fetal problems (70 percent). Fully 30 percent of women thought that abortion should be available “upon the woman’s request.”³⁹ These results in Chile are remarkable given the almost complete lack of media coverage of rights-affirming views on abortion.

Despite these similar results, however, the public reactions to the Alan Guttmacher studies in the two countries were startlingly different. There is generally less public debate on the issue of abortion in Chile than in Colombia. In Chile, the publicity surrounding the publication of the Alan Guttmacher statistics was seen to be an intolerable flouting of the *doble discurso* system, according to which infractions are tolerated so long as they remain out of the public view. “*De eso no se habla*” (one doesn’t speak of such matters) is the key phrase applied to topics such as abortion. In this case, considerable media coverage and debate following the release of the study in 1994 made the findings impossible to ignore. Although progressive Catholic legislators and officials responded by advocating increased support for family planning services to prevent abortions, conservative legislators revived their attempts to increase the criminal penalties for abortion. In fact, the most tangible result of the publicity was an unusually comprehensive crackdown on clandestine abortion clinics that continued sporadically over the next few years. Even the best-known clinic in the upper-class neighborhood of Providencia was subjected to the police raids. Those who publicized the study did so to point out the futility of penalizing such a widespread practice and the public health consequences of its continued illegality. The consequences of the publicity, however, seem to have been mainly negative and punitive, depriving many women of access to the few safe services that existed.⁴⁰

Colombian society, on the other hand, is less conservative, and the Catholic Church has less influence on public policy there than in Chile. Colombian law provides for legal divorce, freedom of religious instruction in the schools,⁴¹ and mandatory sex education in the schools; the new Health Law 100 guarantees the right to family planning methods. However, in both countries public officials still feel compelled to espouse the Catholic norms, while the church publicly exercises influence to block changes in the

abortion laws and to censor AIDS prevention television messages that include condom use.

Abortion services, a few of which operate safely and ethically, are generally much more available in Colombia than in Chile. In the mid-1990s, the author saw full page ads in the daily papers advertising clinics where women could go if they were nervous about “menstrual delays.”⁴² In addition, many clinics legally provide treatment for incomplete abortions, which are generally started by women in their homes through unsafe methods. Nevertheless, these (or other similar) clinics are raided periodically by the police and shut down. The public reaction to the findings of the Alan Guttmacher study was much more muted in Colombia than in Chile, which may reflect a more widespread knowledge and acceptance of the availability of abortions. The Zamudio study, however, which was released at a regional conference for abortion researchers in Bogotá in November 1994, gained much more media attention, perhaps because the conference itself was a high-profile event attended by legislators from throughout the region. Furthermore, the findings were firmer than the estimates in the Guttmacher study, and therefore less easily ignored. It is not clear whether this media attention was causally linked to a subsequent increase in raids and shutdowns of abortion clinics or whether the raids resulted from other dynamics in the political establishment. At any rate, many of the clinics reopened after a prudent lapse in time.

One Colombian official spoke frankly to the media about how the double discourse system (also called “*doble moral*” or double morality in Colombia) operates with regard to abortion in Colombia: “Abortion is not a problem of legal sanctions, but of collective double morality. There is not a single person who doesn’t know where at least one of these medical centers operates, and probably has had occasion to recur to their services. Abortion is an egregious case of clandestine practices that won’t disappear.”⁴³

One explanation for the differences in the level of repression exercised against clandestine providers in the two countries may be the differences in the rule of law. Chile is renowned for its legalistic culture and is known as “the Switzerland of Latin America.” Throughout Chilean history, laws and rules in general have been taken very seriously.⁴⁴ However, this legalism is selective and arbitrarily applied in the case of laws such as those on abortion that are generally viewed as repressive or as requiring a breach of medical ethics by health providers. For example, in 1994, a significant number of women were in jail in Chile for having undergone an abortion, as documented in a study by lawyer Lidia Casas. However, most of these women were not caught in raids on clinics, but rather denounced by a small minority of health providers.⁴⁵ Providers are enjoined by law to denounce women who come to hospitals with complications from induced abortion, thus ostensibly forcing them to breach the confidentiality of the health provider/client relationship. The Casas study, however, suggested that most health providers in Chile

respect the confidentiality of this relationship, since the bulk of the denunciations come from a handful of public hospitals serving low-income populations. Furthermore, the denunciations tend to cluster on days when certain doctors are on duty.⁴⁶ In this instance, the double discourse system operates by creating a public policy that is privately disregarded, thus saving most women from one of the worst consequences of the policy. However, the unlucky few who fell into the hands of providers who obey the letter of the law were imprisoned. Furthermore, both the risk of mortality/morbidity and the risk of imprisonment fall inequitably on low-income women, who disproportionately end up in public hospitals with complications from unsafe abortions. Middle- and upper-class women, who have access to safer private services, usually escape with impunity. One could argue, as in the case of divorce, that this escape valve weakens the will of political actors in both government and civil society to address this issue in an effective and unified manner.

Colombia, on the other hand, is renowned for widespread impunity for a variety of legal infractions due to its fragile, disorganized, and ineffective system of justice and citizen security/policing.⁴⁷ In this country, there is more tolerance for provision of abortion services than in Chile, so long as it remains private and behind-the-scenes, with occasional crackdowns that give a nod to the rule of law and the official discourse condemning abortion. As with other double discourse mechanisms that expand choice, there are no guarantees of accessibility and safety. There seem to be proportionately fewer women who end up in jail in Colombia for abortions than in Chile, although there are no definitive statistics.⁴⁸

The women's and reproductive rights movements in Colombia have suffered from divisions about the best strategy to pursue to decriminalize abortions. Whether the crackdowns that followed the 1994 Zamudio study were coincidental or not, in recent years, nearly every time the issue of abortion has gained prominence in public debates, the repression and crackdowns on clandestine clinics increase, thus incurring negative consequences for women seeking abortions.⁴⁹ Thus, there are real advantages in continuing the silence. Furthermore, networks on reproductive rights understand that it is not to their advantage to be solely identified in the public mind with the issue of abortion, which is much more controversial than other sexual and reproductive rights issues in equal need of attention. Similar to legislators, they run political risks if they identify too strongly with this issue.⁵⁰

Unfortunately, another source of division on the issue of abortion in Colombia comes precisely from the efforts of the reproductive rights movement to expand its reach beyond explicitly feminist organizations. This expansion to diverse organizations such as human rights and social justice NGOs and grassroots low-income women's organizations raises the level of disagreement on abortion within the movement. (See Chapter 2.)

Faced with these divisions, the Colombian Sexual and Reproductive Rights Network, which operates in six cities, decided to focus its campaigns in 1997–98 on the issue of sexual violence, in particular on inequities in the laws and the culture and in the judicial treatment of victims. Through this campaign, the network addressed the issue of abortion by advocating for elimination of criminal penalties in cases involving rape. The network had more success in gaining coverage in the local media than in national organs. One could hypothesize that in a double discourse system, the more national (and therefore semi-official) the media outlet, the harder it would be to gain exposure for alternative viewpoints that flout semi-sacred official norms on reproduction and sexuality.

In Chile, the silencing of those who are in favor of depenalizing abortion, or introducing exceptions under which abortion would not be penalized, is much more thorough.⁵¹ Abortion for health reasons or in case of severe fetal defects was legal until 1989, when one of the last acts of the military government was to make it illegal. Yet groups and legislators wishing simply to restore the civil code to its pre-1989 state are vilified in the conservative press. Early in the democratic period, when Congresswoman Adriana Muñoz proposed to restore the clauses allowing therapeutic abortion, she was branded an “abortionist” and defeated on that basis in her reelection campaign in 1993.⁵²

In general, socially conservative politicians take the lead on this issue, having introduced repeated initiatives since 1990 to increase the criminal penalties for women who undergo induced abortions. Fortunately, there is just enough awareness in the legislature of the inequitable burden of the criminal penalties for low-income women, and these proposals have all been defeated. Throughout the 1990s and through 2005, progressive legislators and the women’s movement have helped to defeat these proposals, although the overall dynamic is still defensive. The Open Forum on Reproductive Rights and Health has been especially active. Formed in 1991, this network of organizations in several provinces has slowly gained more legitimacy. During the 1990s, it was valued by feminists as the only entity within the Chilean women’s movement that dared to openly advocate less repressive laws on abortion.⁵³ Despite this strength, at the time of this study the outreach and effectiveness of the Forum were hampered by several factors. The self-censorship among women’s NGOs in Chile in the case of divorce operates even more strongly in the case of abortion advocacy, and so some of the major women’s NGOs are not willing to join the Forum or its campaigns. Furthermore, as in Colombia, the Forum encountered diversity of opinion within its ranks on the topic of abortion as their network expanded to provincial cities and to more diverse and grassroots women’s organizations. In practice, the network was forced to maintain a policy of voluntary adherence to its campaigns on this issue.

For example, only some regional chapters participate in the Forum's main public strategy on abortion, which is to stand with banners advocating decriminalization of abortion and hand out educational materials in the main city plaza on one Friday of every month. In the tradition of the human rights movement during military dictatorships (most notably the Mothers of the Plaza de Mayo in Argentina), this is a symbolically public statement, bringing a prohibited and ostracized discourse into the most officially public space in the city. It brings citizen disagreement with official policies on taboo topics having to do with reproduction and sexuality out into the open, breaking the logic of the double discourse system. The Forum complemented this strategy, which mainly targets public opinion, with alliances with other NGOs and communications with legislators or government officials when urgent needs for political action arise, as in the case of the 1999 bill that proposed increases in the criminal penalties for abortion.⁵⁴ It is puzzling indeed that up until then there was more political activity among Chilean women's NGOs on the much more taboo issue of abortion than on the continuing legislative efforts to pass a divorce law.

The dynamics affecting advocacy for safe and legal abortions in these two countries demonstrate the main features of the double discourse system: the heavy influence of religious dogma on public policy; the violation of women's reproductive rights to voluntary maternity; the existence of informal or illegal mechanisms to expand private choices; the discrimination against low-income women, both in access to these mechanisms and in the arbitrary and haphazard application of punitive laws and practices; divisions within the political class and citizen movements on the issue; and the lack of sufficient political will among both legislators and the women's movement to provide redress.

IMPLICATIONS FOR ADVOCACY: A DISCUSSION

The above examples demonstrate how semi-official, clandestine, and private mechanisms subvert the limitations on exercise of sexual and reproductive rights imposed by repressive policies and deep societal polarization of opinion. One can only applaud human ingenuity in finding so many circuitous ways to expand individual choices in such contexts. The disadvantages of such a system, however, cannot be ignored, because the consequences lead to irreparable harm to so many individuals and families. When solutions that expand sexual and reproductive choices are unofficial, clandestine, and/or dependent on the judgment of professionals such as health providers, no one is guaranteed access to these solutions, no one can oversee their quality, and the health and legal risks fall disproportionately on low-income or marginalized individuals. The informal mechanisms that expand choice generally are safer and more commonly available as one climbs the socioeconomic ladder, thus softening the consequences of repressive policies for members of those

very sectors that influence policy decisions, whether from the side of the state or of civil society. This mitigation of consequences combines with the political risks associated with advocacy for sexual and reproductive rights to produce lack of political will to defend these rights. This article has pointed out the risks for legislators; NGOs and those within Catholic institutions also face considerable risks.

Political Costs

Those within Catholic institutions who believe in the principle of freedom of conscience in sexual and reproductive matters suffer disproportionately from repression. The seven organizations in the regional network of *Católicas por el Derecho a Decidir* (CDD—Catholics for the Right to Decide) have many clandestine supporters who would lose their jobs if they openly declared themselves to be members. The increasing repression of dissident voices within the church has crippled attempts to foster dialogue among the hierarchy; between the hierarchy and clergy (including nuns), who are generally much more flexible and progressive on these issues; and between lay believers and the hierarchy. Several brave clergy who have voiced their pro-rights views in publications and in the media have been “silenced,” with well-known examples in Colombia and Brazil.⁵⁵ In 1999, a prominent researcher in the physiology of reproduction from the Catholic University in Chile lost his professorship when he published an article in the newspaper *El Mercurio* using arguments from Catholic theology to oppose the Larrain bill, which would have increased criminal penalties for abortion.⁵⁶ In the face of this repression, Catholics for Free Choice and the Latin American partner network *Católicas por el Derecho a Decidir* (CDD) have used research (for example, publishing results of focus groups of Catholic women on these issues) and public opinion polls. In 2004, surveys of Catholics in Bolivia, Colombia, and Mexico demonstrated the mismatch between the private reality and opinions of lay Catholics and the public discourse of the hierarchy.⁵⁷ Through publications and speaking tours, CDDs in seven countries have also publicized the views of dissident Catholic theologians to legitimate their point of view. Unfortunately, the Catholic Church is not a democracy, and these strategies have less power to sway church leaders than they would when used by lay advocates to influence elected legislators. Nevertheless, such research and media exposure still serves a key purpose by helping to legitimize a pro-rights discourse in countries whose public policies are heavily influenced by the church.

Citizen advocacy groups, many of whom are women’s NGOs, are often unable to be as persistent and as effective as antirights activists are. In the cases cited above in Chile and Colombia, citizen activists did not mobilize sufficiently on these issues for a variety of political, economic, and cultural reasons. On the economic side, due to dramatic decreases in foreign aid,

many Latin American NGOs have been suffering from such a precarious financial situation that their ability to be a consistent and independent voice in public debates is in peril. Not only are the few remaining staff completely overextended, but also the NGOs are in such precarious situations that it is a big risk to make an organizational decision to carry the banner for controversial issues. Lacking foreign aid and private national donors for often-controversial programs, the NGOs have begun to depend on local and national government contracts, or on bilateral and multilateral contracts that must be approved by governments, for a significant portion of their funding. In several cases in the region, opposing the government's official position on sexual and reproductive rights issues has made an NGO persona non grata with government agencies. As a result, the NGO is unofficially excluded from winning government contracts or consulting jobs, no matter how unrelated to the NGO's stand on sexual and reproductive rights.

Possible Strategies

An analysis of the logic of the double discourse system suggests three possible strategies to increase the political will for change: using both public health and ethical arguments, decreasing the political risks for various political actors, and eliminating the safety valves. The latter path would be greatly mistaken and would only increase suffering and harm. It would produce the same effects as the Chilean crackdowns on illegal abortion providers, narrowing the choices for thousands of desperate women and couples and probably leading them to take more unsafe measures to end their pregnancies.⁵⁸ The safety valves exist because there is a demand for them that will not be denied, no matter what the official policies.

How then can advocacy strategies address the double discourse system? On issues from divorce to abortion, the main strategies have been to point out the obvious epidemiological facts in lobbying efforts: adolescents are sexually active, women are having abortions, mothers are dying, and couples are separating. Armed with information on the negative consequences for public health of rights-denying policies, advocates lobby behind the scenes and in professional conferences to sway policymakers.

In all advocacy strategies, it is important to study one's audience and to tailor approaches to diverse groups within the ranks. There is a more or less hidden diversity within the corps of legislators and public officials on these issues in most countries. The most vehement defenders of rights, on the one hand, and of semisacred norms limiting rights, on the other, are only the most visible and obvious audiences. Using audience analysis, there is a key flaw in the strategy that depends on public health and equity arguments with regard to the subset of legislators who strongly defend limits to rights on religious grounds: the epidemiological facts will not sway someone who is defending a sacred norm. In Christian religious thinking, the fact that people

transgress or sin does not mean that the Ten Commandments should be thrown out the window. In this view, suffering because of transgression does not constitute an injustice. Morality is conflated with the law, and so making divorce, abortion, or adultery legal is tantamount to giving these acts moral approval.

Besides the public health and equity arguments, there is another argument that may be more effective with these most intransigent opponents of sexual and reproductive rights, and more compelling to believers in all religions: the principle of religious diversity. A group of religious leaders from all of the world's major religions, including a representative from the socially conservative sector of the Catholic Church hierarchy, was convened before the ICPD to discuss reproductive rights issues. A key principle that they all agreed on was that no religion should have the power, through the state or by other means, to impose its precepts on the believers of any other religion. Religious diversity has increased significantly in Latin America and in most traditionally Catholic countries, making this an important argument for advocates.⁵⁹ One complementary advocacy strategy would thus be to forge alliances with believers in religions other than Catholicism to demand that state policies not be linked to the doctrines of any one religion.⁶⁰

Advocates of sexual and reproductive rights do not face arguments based only in religious doctrine. Increasingly, opponents of reform are also using the discourse of human rights, citing the fetus's right to life, or the parents' right to control the education of their adolescent children. Unfortunately, this type of argument falsely pits rights against rights, resulting in stalemated discussions: adolescents' rights against those of parents, and women's rights against those of fetuses. In Latin America, however, the Catholic doctrines of human life and rights beginning at conception and the inadmissibility of premarital sex are embedded in these arguments, so that it is useful for sexual and reproductive rights advocates to deconstruct them to show their basis in one dominant religion's doctrines.

While it is important to understand the belief system of the most committed opponents of sexual and reproductive rights, the use of public health information and equity arguments is still an effective strategy with other policymakers who may be more open to perspectives based on the right to health. This discussion will focus on two less visible audiences present in many legislatures and government agencies: (1) those who have not given the issues much attention and take the traditional stance as the path of least resistance, and (2) those who are already in favor of sexual and reproductive rights but voice these opinions only behind the scenes.

The first audience may not have seriously examined the issues or may have little information; being politicians, they have taken the safe road, which is usually to espouse the traditional norms. This group may be more open to persuasion by information on the inequitable and public health consequences

of repressive laws and norms, especially if public opinion seems to be leaning in the direction of reform. One advocate discussed this group as follows:

Lack of information plays an important role among decision-makers with regard to reproductive issues in many countries. I have interviewed legislators who have no idea of the implications of passing restrictive laws and have never heard different points of view on abortion. . . . The Catholic Church steps into this information vacuum, bringing their lobbyists to the Congress with sensationalist videos on abortion. Unfortunately, the women's groups don't have the same capacity for reaction and mobilization in any [Latin American] countries.⁶¹

This quotation illustrates the importance of the media in airing diverse points of view and the imbalance in the mobilizing capacity between antirights and pro-rights lobbyists.

The second audience consists of those legislators and public officials who take rights-affirming stances on sexual and reproductive health issues in private. There are fierce behind-the-scenes disagreements within governmental agencies, political parties, and committees, too often resulting in bland and meaningless consensus statements, or simply in inaction. Anecdotes about these controversies in private conversations are as common as weeds, but how rare it is that such disagreements come into the public light so that the citizenry can somehow weigh into the debate! Within most agencies and political parties, maintaining the appearance of public consensus is an unquestioned value. As a result, the "legitimate" discourse with guaranteed access to the media is still that of the Catholic Church hierarchies or public figures who agree with them, while the proactive voices in defense of sexual and reproductive rights rarely reach the public eye and ear except when the church is attacking them. This dynamic accords unequal footing to pro-rights discourses in policy debates, perpetuates the political marginalization of rights advocates, and keeps disagreements among political actors safely behind the scenes.

As long as the political costs of espousing controversial pro-rights proposals remain so high, the most effective short-term political strategy for advocates is to obey the logic of the double discourse system by conducting negotiations and lobbying behind the scenes, out of the public eye. In both Colombia and Chile, most current advocacy efforts for abortion law reform are low-key and effectively out of sight. Advocates defend this strategy on ethical grounds, because public debates have resulted in increased repression. This strategy might result in some legal gains, but in the long term it fails to solve the problem of the perceived illegitimacy and immorality of pro-rights stances on these controversial issues in the public realm.

How can the political culture be changed so that bringing these debates into the public view is less costly, both for the advocates and for the men and women who most suffer from the double discourse system? How can the

defensive dynamic be turned around, so that the pro-rights forces could play a proactive role in national debates, rather than responding to initiatives that would erode rights even further? It is clear that various advocacy strategies must focus on reducing political risks for potential advocates. One common strategy is to increase the presence of rights-affirming voices in the mass media, bringing hitherto private opinions into the open. Increased exposure to the arguments on both sides helps to legitimize the debate itself as well as pro-rights positions, and to reduce the political costs of engaging in debate and taking such positions publicly.

With the same aim, many reproductive rights advocacy groups have used public opinion surveys to legitimize rights perspectives. Surveys can help to persuade politicians that defending rights is consistent with the views of their constituents and thus might come with fewer political costs than they fear.⁶² Complementing such surveys with those of Catholics conducted by CDD might be doubly effective in showing politicians the extent of the distance between their constituents and the hierarchy within the church.

As mentioned above, in both Colombia and Chile, one of the sources of division within the women's movement on abortion has been precisely their effort to broaden their social base by including more grassroots and low-income women's organizations. Broadening the coalition that is pro-rights, however, is indeed a promising strategy for civil society groups. The more diverse and broad-based the groups that are supporting rights, the lower the political risk of defending those rights. Although such organizations are much more apt to be ideologically diverse than the feminist NGOs, it is precisely these low-income sectors that suffer the brunt of the negative consequences of rights-denying policies and have the most to gain from policy reform. Therefore, it would be advantageous to create partnerships with subgroups within these organizations, if not with the organization as a whole.

Finally, many women's organizations and pro-rights public officials have followed the strategy of using the consensus documents and conventions signed by the leaders of their country to monitor the country's progress toward the implementation of the accords or treaties. Although the Programme of Action from the ICPD and the Platform for Action from the Fourth World Conference on Women in Beijing reflect compromises on some sexual and reproductive rights issues, notably on the issue of the right to access to safe abortion, their recommendations have still proved to be invaluable instruments for advocacy to expand access to safe, abortion where it is legal. Some women's NGOs use the reporting process to the CEDAW Committee as an important opportunity at national level to work with governments—or through the mechanism of shadow reports (to collect and analyze information on the status of women's rights—including sexual and reproductive rights) within their countries. On the other hand, at least in some countries in Latin America, the reporting process for the Committee on

the Rights of the Child is a relatively under-used resource for advocates of adolescent sexual and reproductive health policies and programs. The concluding comments and observations of the treaty bodies on these issues are excellent tools for advocacy. This strategy is so useful precisely because it legitimates sexual and reproductive health and rights as global human rights under international law, thus reducing the political risks of advocacy.

For all potential advocates of sexual and reproductive rights, whether in government, civil society, or the church, the political risks of publicly defending these rights are probably the key obstacle to attaining a critical mass of supporters. It is one thing to agree privately that sexual and reproductive choices should be a matter of personal conscience rather than law and to avail oneself privately of all of the mechanisms to expand such choices. It is a completely different thing to take on the political costs associated with committing oneself wholeheartedly to advocacy on behalf of controversial issues such as depenalization of abortion.

Before designing strategies, an important exercise for advocates is to analyze the nature of the risks, as well as the sources, the arguments, and the tactics of attacks. Multifaceted strategies that use a combination of tactics to reduce these risks and effectively counter attacks—for example, public opinion polls, alliances on other issues, international agreements, partnerships with media, and education of policymakers—are most effective, because such tactics are mutually reinforcing. Analyzing the differences among potential allies is also important in order to approach each of them appropriately.

As modern societies become ever more diverse in belief systems and in cultural or religious traditions, undue influence of one religious doctrine on the state will become less and less acceptable. The blurring of the distinction between what is considered immoral and what should be illegal greatly hampers efforts in Latin America to protect sexual and reproductive rights. Acceptance of diversity of opinions and belief systems among citizens of a country, and indeed among the believers in any religion, is one cornerstone of democracy, and of the defense of sexual and reproductive rights. Respect for human rights is the other. Sexuality and reproduction are key aspects of human life and welfare, in relation to which governments should be held accountable to their obligation to promote comprehensive physical, emotional, and social health and well-being.

NOTES

1. This chapter is reprinted with some updates and changes with the kind permission of the journal *Health and Human Rights*, published by the François-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, Volume 4, No 2, 2000. For the most part, the descriptions of policies and the situation of NGOs correspond to the situation at the time the article was written in 1999, but updates from 2004–2005 reflect the passage of a divorce law in Chile in 2004.

2. Programme of Action of the International Conference on Population and Development, Report of the International Conference on Population and Development, September 5–13, 1994, UN Doc. A/CONF.171/13, para. 7.3. The reservations expressed by Argentina in the “Cairo+5” meetings in 1999 coordinated by UNFPA represent an exception to the general consensus in Latin America.

3. Belden, Russonello & Stewart, *Attitudes of Catholics on Reproductive Rights, Church-State, and Related Issues*, Washington, DC: Catholics for Free Choice and Católicas por el Derecho a Decidir en Bolivia, Colombia y Mexico, 2003; Catholics for Free Choice, *Catholics and Reproduction: A World View*, Washington, DC: CFFC, 1994.

4. L. Haas, “The Catholic Church in Chile,” in C. Smith and J. Prokopy (eds.), *Latin American Religion in Motion*, New York and London: Routledge, 1999; Mala Htun, “Church and State in the Struggle for Divorce,” Chapter 4 in M. Htun (ed.), *Sex and the State: Divorce, and the Family Under Latin American Dictatorships and Democracies*, Cambridge, UK: Cambridge University Press, 2003. See also M. Blofield, “The Politics of Abortion in Chilean and Argentina: Public Opinion, Social Actors and Discourse, and Political Agendas,” presented at Latin American Studies Association conference, Chicago, September 1998.

5. R. Petchesky, and K. Judd (eds.) for the International Reproductive Rights Action Group (IRRRAG), *Negotiating Reproductive Rights*, New York: Zed Books, 1998, 17.

6. The author worked in these countries from 1992 to 1998 as the program officer in charge of the Ford Foundation’s Sexual and Reproductive Health Program, based in the Andean Region and Southern Cone office in Santiago, Chile.

7. I am indebted to Mari Luz Silva, one of the designers of the Chilean government’s sex education program, for serving as the original inspiration for this article with her thoughts on Catholic cultures and the double discourse.

8. The Philippines is the main example outside of Latin America of a state heavily influenced by Catholicism. It would be interesting to analyze whether the double discourse system operates in countries with other hegemonic religions as well.

9. From the author’s conversations with members of Católicas por el Derecho a Decidir network in six Latin American countries.

10. Koinonia [organization of theologians], *Problemática Religiosa de la Mujer que Aborta*, Bogotá, Colombia: Universidad Externado de Colombia, 1996. Also presented at a World Health Organization meeting of Latin American researchers on abortion at the Universidad Externado de Colombia, Bogotá, Colombia, November 1994.

11. L. Haas, “The Catholic Church in Chile,” in C. Smith and J. Prokopy (eds.) (1999), 60 describes how church officials “collect the bill” (*cobran la cuenta*) in their lobbying of representatives of the Left who received protection from the church.

12. John Paul II’s conservative appointments of bishops started during the military dictatorship, strengthening the faction of the church that was allied with the military government even as progressive sectors of the church led the efforts to protect human rights. See L. Haas 1999 op. cit. and M. Htun 2003 for a full discussion.

13. The ownership of Chilean newspapers and television stations is concentrated in two large conglomerates and the Catholic Church, all of which tend to have socially

conservative editorial policies. See M. Blofield, 22, *op. cit.* (see note 4); Uca Silva of Sur Profesionales, Santiago, also analyzes the effect on public debates of this concentration in an unpublished 1996 report to the Ford Foundation's Andean and Southern Cone office.

14. Until 2004, Chile, Malta, and Andorra were the only countries with no divorce law. The Universal Declaration of Human Rights, G.A. Res. 217A (III), UN GAOR, Res. 71, UN Doc. A/810 (1948), Art. 16.1 states that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution," thus implicitly recognizing dissolution as part of the right to marriage. Articles 23.2 and 23.4 of the International Covenant on Civil and Political Rights, G. A. Res. 2200 (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 49, UN Doc. A/6316 (1966) contain similar language. Applying the logic of implicit recognition, the most recent report of the UN Committee on Human Rights on Chile (CCPR/C/79/Add.104, para. 17) said that the lack of a divorce law might constitute a violation of Article 23. Thanks to Luisa Cabal of the Center for Reproductive Rights and Gaby Oré Aguilar for thoughts and references.

15. Grupo Iniciativa Mujeres, "Encuesta Nacional: Opinión y Actitudes de las Mujeres Chilenas sobre la Condición de Género," January 1999, carried out by Quanta Sociología Aplicada, using a nationally representative urban sample of 1,800 women in 22 cities. For an excellent in-depth analysis of the issue of divorce in Chile, see Chapter 4 in M. Htun, "Church and State in the Struggle for Divorce," 2003.

16. M. Aylwin and I. Walker, *The Chilean Family: Aspirations, Realities, and Challenges*, 1996, 121, quoted in M. Htun 2003.

17. This provision has its basis in canon law, in which it was assumed priests would know the situation of couples residing in the same neighborhood well enough to prevent them from being married if there were important impediments, such as too close a relation or an existing spouse. The opinion in the Supreme Court case of Sabioncello con Haussman (March 28, 1932) reads: "It is legitimate to prove the lack of competence of the Official of the Civil Registry by means of the witnesses' testimony [that neither of the spouses lived within the jurisdiction of that official] during the annulment proceedings." Quoted in H. Corral, "Iniciativas Legales sobre Familia y Divorcio," in *Controversia sobre Familia y Divorcio*, Santiago: Ediciones Universidad Católica de Chile, 1997, 172.

18. This high rate is explained by both nonformalized unions and adolescent pregnancies. A new law giving children born inside and outside of marriage equal rights and benefits took effect in 1999; see C. Gutierrez, "46% de niños chilenos nacen fuera del matrimonio," [46 percent of Chilean children are born outside of marriage] October 27, 1999, *La Tercera* [newspaper].

19. M. Htun 2003.

20. Instituto de la Mujer in Chile, unpublished 1996 research report on "Food pensions."

21. As established in Article 23.2.4 of the ICCPR (see note 14).

22. There is definitely less stigma attached to advocating for a divorce law, however, than for a law on "therapeutic" abortion, which in current debates in Chile would include legality of abortion in cases of rape, incest, and severe fetal anomalies.

23. L. Haas (1999), 60, and M. Htun 2003, Chapter 4. Htun provides an in-depth analysis of the “reformist coalitions” promoting divorce in the 1990s and of the dynamics within the corps of Christian Democrat legislators.

24. See C. Kraus, “Victoria Would Not Be Amazed by Chile Today,” October 24, 1999, *New York Times*. Haas 1999 also agrees with this assessment, quoting several rightist deputies to document her perception that members of the political right are defecting from their formerly uniform support for the church’s lobbying efforts.

25. María Antonieta Saa, deputy to the Congress, quoted in an unpublished 1997 study by Peruvian sociologist Maruja Barrig, “De Cal y Arena: ONGs y Movimiento de Mujeres en Chile,” 17.

26. M. Barrig 1997, 16.

27. The main sources for this section on Colombia and Chile are the NGO shadow reports for the 20th session of the CEDAW Committee for both countries. Both are available in English and Spanish. For Colombia, see Center for Reproductive Rights (then called Center for Reproductive Law and Policy—CRLP) and Corporación Casa de la Mujer, *Derechos Reproductivos de la Mujer en Colombia: Un Reporte Sombra*, New York and Bogotá: CRLP and Corporación Casa de la Mujer, 1998; The Chilean NGO shadow report, *The Rights of Women in Chile* New York and Santiago, 1999, was cowritten by CRLP, the Comité Latinoamericano y del Caribe para la Defensa de los Derechos de la Mujer (CLADEM), Foro Abierto de Salud y Derechos Sexuales y Reproductivos, and Corporación de la Mujer, La Morada.

28. ICPD Programme of Action (see note 1), para. 7.3.

29. Although hospital data on abortion are widely acknowledged to be under-reported, in the mid-1990s abortion still figured in official data as the first cause of maternal mortality in seven Latin American Countries, including Chile; see FLACSO (Chile) and Instituto de la Mujer (Spain), *Mujeres Latinoamericanas en Cifras: Tomo Comparativo*, Santiago, Chile: FLACSO, 1995, 131.

30. The map of countries and restrictions is available from the Center for Reproductive Rights, accessed on November 1, 2005: http://www.reproductiverights.org/pub_fac_abortion_laws.html. In most lists, Colombia is counted as a country allowing abortion in cases of threat to the woman’s life or physical health, but in fact the law is ambiguous. No. 5, Article 29 in the Colombian Penal Code can be interpreted as depenalizing interruptions of pregnancy in “estado de necesidad” (state of necessity) to protect the life or health of the mother. Protection in these cases is open to interpretation by individual judges and thus is not guaranteed. For a full discussion of the legal situation of abortion in Colombia, see D. Arcila, “El Aborto Voluntario en Colombia: Urgencia de un Abordaje Jurídico Integral,” in *Perspectivas en Salud y Derechos Sexuales y Reproductivos*, Medellín, Colombia: CERFAMI, 1999, 14–22.

31. Personal communication from Dr. José Barzelatto, Center for Health and Social Policy.

32. Alan Guttmacher Institute. *An Overview of Clandestine Abortion in Latin America*, New York: Alan Guttmacher Institute, 1996.

33. “Aborto: Informe Especial,” *Cambio 16*, February 1997, 20–23, quoted in D. Arcila 1999.

34. “Induced Abortion Worldwide,” Facts in Brief, Alan Guttmacher Institute, from a 1999 publication, accessed on November 1, 2005: http://www.guttmacher.org/pubs/fb_0599.html#13.

35. L. Zamudio, presentations to the Meeting of Researchers on Induced Abortion in Latin America and the Caribbean at the Universidad Externado, Bogotá, November 1994, and the Latin American and Caribbean Parliamentarians’ Meeting on Abortion, Bogotá, October 1998.

36. Arcila 1999, 8, op. cit. (see note 30).

37. D&C stands for dilation and curettage—that is, the scraping of all remains of the fetus from the uterus in cases of incomplete abortion. The account of forced medication comes from a conversation with the Medellín, Colombia chapter of the National Network for Sexual and Reproductive Rights in the mid-1990s. In the author’s experience, anecdotes about hostile remarks are almost universal when talking with researchers and activists who work with the health sector and community groups on the issue of abortion.

38. January 29, 1997 survey by the Centro Nacional de Consultoría, quoted in Arcila 1999, 22, op. cit. (see note 30).

39. See Grupo Iniciativa Mujeres 1999, op. cit. (note 15).

40. I was first alerted to this issue in a conversation with anthropologist Monica Weisner, the researcher for the Alan Guttmacher study. Most informants in the Chilean women’s movement believe that safe clandestine abortion services became scarcer after 1994 than they were previously, and now the clandestine referral networks often have no referrals to offer. At last inquiry in December 2004, the cost of a safe surgical legal abortion in Chile varied from US\$1,000 to \$1,500. The minimum wage in 2004 is approximately US\$200 a month, and the median monthly family wage is US\$660.

41. In Chile, the author’s personal experience shows that a course on Catholic religion is mandatory in all schools, public and private, and can only be taught by instructors certified by a Catholic institute. Parents of children of other faiths must request to be excused from the class and cannot organize an alternative class on, say, world religions.

42. Examples of these ads can also be found in the article “Aborto: ¿Hora de legalizar?” *Semana*, February 9–16, 1993, 41.

43. Ibid.

44. The glaring exception to this trend has been the amnesty for the human rights abuses committed during the dictatorship. This amnesty is now, however, subject to serious legal challenges both within Chile and from abroad.

45. Lidia Casas, *Women Behind Bars*, New York: Center for Reproductive Law and Policy, and Santiago: Open Forum on Reproductive Health and Rights, 1998. A Spanish language edition is also available. Recent inquiries with police authorities in 2003 by the Católicas por el Derecho a Decidir organization in Chile suggest that women who are denounced for induced abortions are no longer sent to jail in Chile.

46. Personal communication from José Barzelatto.

47. Ninety-eight percent of all court cases do not result in a sentence. In cases of homicide, 95 percent of the cases are never solved; source: Mauricio Rubio, *Crimen sin sumario. Análisis Geoeconómico de la Justicia Colombiana*, Bogotá: Centro de Estudios para el Desarrollo de la Universidad de los Andes, 1996. The *Consejo*

Superior de Judicatura disputes this figure and estimates impunity at 60 percent, which is still extremely high. Personal communication from Carmen Posada, lawyer and executive director of CERFAMI (Center of Integrated Resources for Families) in Medellín.

48. In 1991, there were 137 court cases and 29 people imprisoned for abortion in Colombia; see “Aborto: ¿Hora de legalizar?” (note 42). In comparison, the Chilean study (Casas 1998, *op. cit.* note 45) shows that 57 percent of the women who had abortions and whose cases were reviewed spent time in prison, and 36 percent were held for more than two weeks. The study also reports that 22 women in the small provincial city of Puerto Montt were in jail for abortion at the time of a visit by the Open Forum, a reproductive health NGO network. Given that Colombia has 2.6 times the population of Chile, the level of repression in Chile is clearly much higher. With the high levels of impunity for other crimes in Colombia, however, it is telling that so many women end up in jail for abortion.

49. Many personal communications from Colombian colleagues over the years, most recently from Carmen Posada.

50. See full discussion of this issue in Chapter 2.

51. Current proposals would allow abortion to save the woman’s life and health or in cases of severe fetal defects or rape and incest, under the misnomer of “therapeutic abortion.”

52. She regained her seat in the next elections in 1997, however, Mala Htun (personal communication) notes that other sponsors of the bill were not defeated. It would be interesting to analyze what circumstances made her more vulnerable.

53. M. Barrig 1997. The situation has changed since the Barrig study; there are other organizations involved in abortion advocacy in Chile in 2004–2005.

54. This was known as the Larrain bill. Personal communication from Josefina Hurtado of the Forum, October 1999.

55. The best-known example from Brazil is that of Sister Yvone Gerbara, who gave an interview to the national magazine *Veja* in which she advocated depenalization of abortion. In Colombia, Alberto Munera, a prominent Jesuit theologian, was deprived of his teaching post in 1995 after he defended ICPD principles on a national television program.

56. This was Dr. Horacio Croxatto from the Instituto Chileno de Medicina Reproductiva (ICMER). Personal communications from Dr. José Barzelatto and several other Chilean colleagues.

57. Belden, Russonello & Stewart. 2003, *op. cit.*

58. It would be important to conduct a follow-up study in Chile to the 1994 Guttmacher study to verify whether in fact there are fewer providers than before, although an important confounding factor is that medication abortion has become more widely available since that study was done.

59. I am indebted to Dr. José Barzelatto for consistently pointing out the importance of this agreement; see “World Religions and the 1994 UN International Conference on Population and Development: A Report on an International and Interfaith Consultation,” Chicago, IL: Park Ridge Center for the Study of Health, Faith, and Ethics, 1994. For a full discussion of increased religious diversity in Latin America, see C. Smith and J. Prokopy 1999.

60. According to the 1992 census, about 13.4 percent of the Chilean population are Evangelical/Protestant, while 76.7 percent are Catholic. Atheists make up 5.8 percent of the population, and “other religions” (probably mainly Jewish and Muslim) make up 4.24 percent; see F. Kamsteeg, “Pentecostalism and Political Awakening in Pinochet’s Chile and Beyond,” in C. Smith and J. Prokopy 1999. More recent studies show an increase in the percentage of Evangelicals to 16 percent and a decrease in the percentage of Catholics to 72 percent; see *Diario El Segundo*, December 17, 1998, quoted in a personal communication from Josefina Hurtado.

61. Personal communication from Luisa Cabal, staff attorney, Center for Reproductive Rights.

62. Besides CDDs in Mexico, Colombia, and Bolivia, other groups include Calandria, a communications NGO in Peru, as well as Grupo Impulsora in Peru and Grupo Iniciativa in Chile—two post-Beijing NGO networks.